United States Court of Appeals

for the Second Circuit

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FOLEY SQUARE
NEW YORK, NEW YORK 10007

C/A Index No.
76-7181

In the Matter of the Appeal of,

76-7181

Albert E. McFerran Jr. PRO SE
Tenured Teacher,
Enlarged City School District,
Troy, New York 12180 appellant

-against-

B

The Board of Education, Enlarged City
School District of Troy, New York
1950 Burdett Avenue
Troy, New York respondent
attorney: George Lettko
5 First St.
Troy, New York 12180

-and-

The Commissioner of Education
State of New York
University of the State of New York
Washington Avenue
Albany, New York respondent
attorney: Robert Stone
Counsel to the Commissioner

In compliance with Rule 30, Rules of Procedure, Federal Rules of Appellate Procedure, the following APPENDIX is submitted to the U.S. Court of Appeals at New York, New York in relation to the BRIEF filed by the herein Appellant PRO SE in the matter as stipulated above.The Appendix is pertinent to the Brief of the Appellant filed in appeal to a Memorandum-Decision-Order of Judge James T. Foley, 75-CV-265, dated February 26, 1976, given at the United States District Court, Northern District of New York, Albany, New York.

To the best of the knowledge of the appellant, he does not have in his possession "relevant docket entries"(Rule 30(d), and he will therefore incorporate a copy of the Index which as per a letter sent to me on April 14,1976 from the Utica office of the Northern District Court.

APPENDIX

PAGINATION AS IN ORIGINAL COPY

APPENDIX

THE ENLARGED CITY SCHOOL DISTRICT OF TROY
BOARD OF EDUCATION

The D. P. Van Arnam Educational Campus
1950 Burdett Avenue
Troy, New York 12180

January 8, 1975

Mr. Albert E. McFerran, Jr.
Troy High School
Troy, New York 12180

Dear Mr. McFerran:

In view of your language on the morning of January 8, 1975 in the Troy High School Principal's Office regarding the matter of my letters to you of August 8, 1974 and January 3, 1975 I am suspending you from your position as a teacher in Troy High School effective this date. This suspension will be for an indefinite period and will be with pay.

You are to notify the Principal, Mr. Guy A. Enfanto, of your location and where you may be contacted within an hour's notice.

Very truly yours,

Sidney L. Johnson

Sidney L. Johnson
Superintendent

SLJ/rr

CC-Mr. Guy A. Enfanto
Miss Barbara Worcester

BOARD OF EDUCATION

The D. P. Van Arnam Educational Campus

1950 Burdett Avenue

Troy, New York 12180

August 8, 1974

Mr. Albert E. McFerran, Jr.
Troy High School
Troy, New York 12180

Dear Mr. McFerran:

Reference is made to your letter of August 5, 1974 in which you referred to a letter dated July 19, 1974, having to do with a grievance relative to the underpayment of summer school salaries. This letter acknowledges receipt of the two (2) letters and confirms statements made by me in a meeting with you and Mr. Adelard Hanley, Assistant Principal, Troy High School, during the A.M., during August 8, 1974.

I made the following statements for your guidance and compliance:

1. Your grievances are out of channels regardless as to whether you use the guidelines set forth in the 1973-74 Agreement between the Troy Teachers' Association and the Superintendent of Schools or any other guidelines written or verbal. It is expected that you will address any dissatisfactions concerning your employment to the Principal, or the Assistant Principal if the Principal is not present, Troy High School. I advised you to submit all official communications to your Principal if you desire school district action.

2. I advised you specifically that your letters of July 19 and August 5 contained language that is aggravating to the Board of Education.

3. I advised you that I will not again recommend you for appointment as a summer school teacher under the existing salary conditions.

4. I will recognize the grievance procedure set forth in the Agreement between the Troy Teachers' Association and the Superintendent of Schools in matters that concern any official relationship between the School District and its teaching staff.

This is a closed matter and no further action will be taken unless you appeal to the Board of Education and they grant you a hearing.

Please acknowledge receipt of this letter.

Very truly yours,

Sidney L. Johnson
Superintendent

SLJ/rr
CC-Members, Board of Education
Mr. Enfanto
Mr. Hanley

1A

January 3, 1975

Mr. Albert E. McFerran, Jr.
Troy High School
Troy, New York 12180

Dear Mr. McFerran:

In accordance with instructions from the Board of Education, this letter is to advise you that my letter of August 8, 1974 was intended to provide you with guidance and information. The letter was not intended to be a reprimand.

Sincerely,

Sidney L. Johnson
Superintendent

SLJ/rr

CC-Mr. David Orlep

1B

Form 3020-A-1

The University of the State of New York
The State Education Department
Office of School District Employer-Employee Relations
99 Washington Avenue
Albany, New York 12210

Notice of Determination of Probable Cause on
Charges Brought Against Tenured School District Employee
Section 3020-A
Education Law

To: Albert E. McFerran, Jr.
(name of tenured school district employee)

131 Clermont St., Albany, N.Y. 12203
(address)

Please be advised that (board of education, ~~board of cooperative educational services~~ Enlarged City School District of Troy, 1950 Burdett Ave. Troy, N.Y.) of (legal title of district) (address), meeting in executive session May 5, 1975 (date), has found that there is probable cause for the following charge preferred against you by Sidney L. Johnson (name of complainant):

(Please describe charge in detail - use separate form for each charge)

CHARGE I - You are charged with incompetency and/or mental disability as those terms are used in Section 3012(2) of the Education Law in connection with Section 3020-a of such law

Specifications of CHARGE I

1. You were given a Section 913 examination by the Board's medical examiner Dr. Walter A. Osinski, M.D., psychiatrist which took place on January 31, 1975 and on February 4, 1975.

2. Such examination was given pursuant to the Board of Education's Resolution enacted on January 14, 1975.

3. The Board of Education received the report of said examination by Dr. Walter A. Osinski.

(Cont'd on next page)

Attached is a copy of the rights of tenured employees under section 3020-A of the Education Law. A copy of this charge is being forwarded to the New York State Commissioner of Education, as required by law.

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THE ENLARGED CITY SCHOOL DISTRICT OF TROY, NEW YORK

In the Matter of Charges

-against-

ALBERT E. McFERRAN, JR.,

A tenured Teacher.

COMPROMISE AND SETTLEMENT AGREEMENT

MADE on this 11th day of July, 1975

BETWEEN ALBERT E. McFERRAN, JR., a tenured teacher of The Enlarged City School District of Troy, New York, residing at 131 Clermont Street, Albany, New York 12203, herein called "McFerran,"

AND THE BOARD OF EDUCATION OF THE ENLARGED CITY SCHOOL DISTRICT OF TROY, NEW YORK, having its offices at 1950 Burdett Avenue, Troy, New York, 12180, herein called "Board"

WITNESSETH THAT

WHEREAS Mr. McFerran is the respondent in proceedings brought under section 3020-a of the Education Law in certain Charges and Specifications filed on May 5, 1975, as to which the Board had determined probable cause under section 3020-a(2) on May 5, 1975, and a public hearing of such charges having commenced on June 11, 1975, and continued on June 19 and June 23, 1975, and then adjourned to continue on July 11 and 12, 1975, after Mr. McFerran on June 23, 1975, moved for two week adjournment to obtain counsel; and Michael G. Breslin, Esq., of Albany, New York,

School District of Troy, New York and Ewald Nyquist, Commissioner of Education of the State of New York (Civil Action No. 75-CV-265) now pending in the United States District Court, Northern District of New York, shall be immediately discontinued on the merits and with prejudice, without costs.

5. Mr. McFerran's appeal and petition to the Commissioner of Education of the State of New York dated January 31, 1975, alleging improper suspension on January 8, 1975, and known as Appeal No. 10416, together with any related grievance shall be immediately discontinued by Mr. McFerran on the merits and with prejudice.

6. Mr. McFerran hereby represents that he has no other action pending against the Board, its agents, servants or employees nor against the said Commissioner of Education, other than as herein stated.

7. Mr. McFerran shall make, execute, acknowledge and deliver valid releases in favor of all the officers, agents and employees of the Enlarged City School District of the City of Troy, New York, the Board of Education thereof and all members of the Board past and present, and the Commissioner of Education of the State of New York, and Arthur F. McGinn, Jr., Esq., George S. Lettko, Esq., and Dr. Walter A. Osinski releasing and forever discharging them in the conventional type general release from any and all claims in law or equity, past, present or future which Mr.

herein shall be construed to preclude the Board, its agents or employees from public disclosure of any such record in order to respond to any public statement or writing which Mr. McFerran might make, if any, relating to the subject matter of this proceeding which has been held as a public hearing at the express request of Mr. McFerran.

12. The Board and Mr. McFerran hereby agree to submit to the Rensselaer County Supreme Court any dispute which may arise from the interpretation, or relating to the carrying out of this compromise and settlement agreement or to the performances set forth herein; and more particularly any such dispute shall be submitted pursuant to the "New York Simplified Procedure for Court Determination of Disputes" as provided in Civil Practice Law and Rules 3031 thru 3037, and the Board and Mr. McFerran hereby waive a jury trial in any such dispute.

IN WITNESS WHEREOF, Mr. McFerran and the Board have signed and sealed or caused this instrument to be signed and sealed with their respective hand and seal.

Albert E. McFerran, Jr. L.S.

seal

THE BOARD OF EDUCATION OF THE ENLARGED CITY SCHOOL DISTRICT OF TROY, NEW YORK

By _____

Michael G. Breslin
Attorney for Albert E. McFerran, Jr.
90 State Street
Albany, New York 12207

George S. Lettko
Attorney for the Board
5 First Street
Troy, New York 12180

DE GRAFF, FOY, CONWAY AND HOLT HARRIS
ATTORNEYS AND COUNSELORS AT LAW
NINETY STATE STREET
ALBANY, NEW YORK 12207
TELEPHONE (518) 482-5901

July 30, 1975

George S. Lettko, Esq.
5 First Street
Troy, New York 12180

Re: Albert E. McFerran, Jr.

Dear George:

Enclosed is the original and one copy of the stipulation in regard to the civil action Mr. McFerran commenced in the U. S. District Court for the Northern District of New York. As I previously indicated to you, I have already talked with John Driscoll, who sees no problem in entering the stipulation to discontinue the action.

After I get John Driscoll's execution following yours, I will then proceed to federal court to get the stipulation properly filed to terminate this matter.

I will keep you abreast of my efforts to terminate the appeal presently before the Commissioner of Education.

Very truly yours,

Michael G. Breslin

MGB/lmd
Enclosures

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EXHIBIT "V" - 11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ALBERT E. McFERRAN, JR.,

Plaintiff,

-against-

BOARD OF EDUCATION FOR THE ENLARGED CITY SCHOOL DISTRICT OF TROY, NEW YORK and EWALD B. NYQUIST, COMMISSIONER OF EDUCATION OF THE STATE OF NEW YORK,

Defendants.

Civil Action No. 75-CV-265

STIPULATION

It is hereby stipulated that the above-entitled action may be discontinued on the merits with prejudice, without costs.

Dated: , 1975.

Michael G. Breslin
Attorney for Plaintiff
90 State Street
Albany, New York 12207

George S. Lettko
Attorney for Defendant BOARD OF EDUCATION FOR ENLARGED CITY SCHOOL DISTRICT OF TROY, NEW YORK
5 First Street
Troy, New York 12180

LOUIS J. LEFKOWITZ
Attorney General, State of New York

By: John Q. Driscoll
Assistant Attorney General
Attorney for EWALD B. NYQUIST, COMMISSIONER OF EDUCATION OF THE STATE OF NEW YORK
The Capitol
Albany, New York 12224

EXHIBIT "V"

lists no element of responsibility or accountability for those who employ the statute improperly or illegally thereby causing suffering and financial loss to the person(s) involved and to the school district itself, and said statute structures no means of evaluation as to its effectiveness and the relationship in use to ineffective or nonexistence of adequate personnel-grievance procedures within the various school districts. Also, the statute is presuming on matters which are basically matters of civil law suits and civil jury trials.

WHEREFORE, plaintiff Albert E. McFerran Jr. respectfully asks this court:

1. Assume jurisdiction in this matter.

2. Pursuant to Title 28 U.S.C. #2281 and #2284 convene a three-judge Federal District Court immediately to hear and finally resolve this proceeding in the interests of both the plaintiff and all the teachers of the State;

3. Issue a permanent injunction restraining defendants, their agents, employees, attorneys and others acting in concert therewith from the enforcement, operation or execution of #3020-a of the Education Law of the State of New York;

4. That #3020-a, particularly as to parts (3),(4) and (5) of the Education Law of New York State be construed and declared unconstitutional.

5. That pending the hearing and determination of prayers for permanent relief, a preliminary injunction issue restraining the defendants, their agents, servants, employees, attorneys and all others acting in concert therewith from enforcing or attempting to enforce in any way #3012(2) and #3020-a of the Education Law of the State of New York relied upon by the defendants in this action, or from instituting or undertaking any proceedings whatsoever pursuant to said statute against the individual plaintiff or from preventing his employment as a teacher in the Enlarged City School District of Troy.

6. That the court direct that the defendant school district remove the unlawful and illegal suspension placed against him on January 8, 1975 by the Superintendent of Schools Sidney L. Johnson, such action done without cause.

7. Allow plaintiff such fees and costs which he has incurred herein and all other relief which this court may seem fit in the premises.

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Plaintiff respectfully asks that the above relief be granted.

Albert E. McFerran Jr.

ALBERT E. MCFERRAN JR.
Plaintiff

Dated: May 22, 1975
Albany, N.Y.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ALBERT E. McFERRAN, JR.,

Plaintiff,

-against- 75-CV-265

BOARD OF EDUCATION FOR THE ENLARGED CITY SCHOOL DISTRICT OF TROY, N.Y. and EWALD B. NYQUIST, COMMISSIONER OF EDUCATION OF THE STATE OF NEW YORK,

Defendants.

APPEARANCES: OF COUNSEL:

JOAN GOLDBERG
Attorney for Plaintiff
370 Lexington Avenue
New York, New York 10017

ALBERT E. McFERRAN, JR.
Plaintiff Pro se, appearances and submissions also
131 Clermont Street
Albany, New York 12203

GEORGE S. LETTKO
Attorney for Defendant Board of Education for the Enlarged City School District of Troy, New York
5 First Street
Troy, New York 12180

LOUIS J. LEFKOWITZ
Attorney General of the State of New York
Attorney for Defendant Ewald B. Nyquist, Commissioner of Education of the State of New York
Capitol
Albany, New York 12224

JOHN Q. DRISCOLL
Assistant Attorney General

JAMES T. FOLEY, D.J.

MEMORANDUM-DECISION and ORDER

Defendants, the Board of Education for the Enlarged City School District of Troy, New York, and Ewald B. Nyquist, Commissioner of Education of the State of New York, (hereinafter "Board of Education" and "Commissioner" respectively) have moved by separate motions to dismiss the instant action on the basis of a Compromise and Settlement Agreement ("Agreement") between the

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parties wherein plaintiff specifically stipulated to the discontinuance of the instant action (75-CV-265) with prejudice. See Board of Education's Motion to Dismiss, Exhibit I, para. 4 (filed September 26, 1975). Defendant Commissioner has moved in the alternative to also strike paragraph 17 of the complaint.

This action was commenced by plaintiff pro se on May 28, 1975. The complaint itself is a lengthy narrative asserting jurisdiction pursuant to 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983, and claiming that Section 3020 of the New York Education Law is unconstitutional in that it denies plaintiff due process of law. In seeking to have the enforcement of this section permanently enjoined, plaintiff requests the convening of a three-judge court, and an order reinstating him as a teacher in the Troy public school system. The motions to dismiss by defendants were filed on July 7, 1975 (by the Board of Education) and September 29, 1975 (by the Commissioner) yet were not heard until December 1, 1975, with final submissions and briefs completed on February 18, 1976. The majority of these delays were attributable to plaintiff's requests for time to obtain a lawyer and further requests to file legal papers pro se even after his lawyer entered the case and made submissions on his behalf.

The briefs filed on behalf of plaintiff attack the Agreement by asserting that it is invalid on three grounds: (1) it is "illusory"; (2) the Board of Education was legally incompetent to make it; and (3) no consideration was given to the plaintiff. Both the brief filed by plaintiff's attorney and the further papers filed by plaintiff pro se also reallege the constitutional challenges made in the complaint. It must be emphasized that this decision will be primarily concerned with the enforcement of the Agreement discontinuing this instant litigation. However, a limited consideration will be given to these constitutional issues, in light of recent federal court decisions.

At the onset of this discussion it must be noted that any attack upon a compromise and settlement agreement affecting a pending action must be limited in scope by established principles of contract law. See Patterson v. Newspaper & Mail Del. U. of N.Y. & Vic., 514 F.2d 767, 771 (2d Cir. 1975), pet. for cert. filed sub nom. Larkin v. Patterson, 44 U.S. Law Week 3069 (July 28, 1975); cf. Meetings & Expositions, Inc. v. Tandy Corporation, 490 F.2d 714, 717 (2d Cir. 1974)(per curiam). Additionally, the fact that the action filed in this District Court was one involving constitutional rights alters neither the ability of the parties to settle the action nor the ability of the plaintiff to waive further litigation on alleged violation of his constitutional rights. Cf. United States v. Armedo-Sarmiento, 524 F.2d 591 (2d Cir. 1975) (per curiam). The basic determination for this Court is to evaluate the fundamental validity of the settlement agreement with this guide:

> [i]n determining the effectiveness of any such waiver, a court would have to determine at the outset that the employee's consent to the settlement was voluntary and knowing . . . .
>
> Alexander v. Gardner-Denver Co., 415 U.S. 36, 52 n.15 (1974).

No allegation is made that plaintiff entered into this Agreement involuntarily. Furthermore, it is noted and emphasized that the Agreement was negotiated with counsel, competent to my knowledge, representing plaintiff and playing a significant role in plaintiff's behalf during the proceedings involving the Board of Education. The plaintiff claims in his most recent voluminous affidavit, filed February 23, 1976, pro se, that even though plaintiff is now represented by counsel there was inadequacy and a failure of proper advice by his former counsel, who represented him in prior negotiations and during the hearing pursuant to Section 3020 of the N.Y. Education Law. The plaintiff says such conduct is responsible for his signing the Agreement. This factor, however, is legally insufficient to overturn the Agreement. See Gilbert v. United States,

479 F.2d 1267 (2d Cir. 1973) (per curiam).

Plaintiff also challenges the competency of the Board of Education to enter into this Agreement relying principally on Matter of Boyd v. Collins, 11 N.Y.2d 228 (1962). This case is readily distinguishable from the case at bar, in my judgment. In Boyd the Court of Appeals of New York held that a board of education was powerless under the New York Education law to award a year's salary to a teacher as a quid pro quo to her resignation from her teaching position and her relinquishment of tenure rights. The Court of Appeals' holding was simply that:

> [p]aying a public officer or employee for services not rendered is an unconstitutional gift of public moneys.
>
> Id., at 234.

No such payment is made by the present Agreement. By the Agreement, plaintiff is placed on sick leave with pay until such time as he feels fit to be examined by a psychiatrist for the Board of Education and certified competent to again teach. The Agreement guarantees to plaintiff the right to be reinstated to full teaching responsibilities and tenure upon such certification. The consideration of this Agreement is substantial and, in my judgment, mutual and supports the validity of its terms. It essentially recognizes that plaintiff should be accorded the benefits of being paid, although not actually rendering services for such compensation, until such time as plaintiff is fit to reassume his teaching responsibilities. Although plaintiff makes allegations that the Board of Education intends to violate this Agreement and not to honor its promises in good faith, absolutely no indication of a basis in fact for this assertion has been shown. Indeed, plaintiff has refused to submit to an examination by the psychiatrist for the Board of Education as called for by the Agreement, yet asserts that the psychiatrist intends never to certify him to teach again under the terms of the Agreement. See Leonard v. Sugarman, 466 F.2d 1366

(2d Cir. 1972)(per curiam).

The questions remaining are a repetition of the issues raised in the complaint which challenge the constitutionality of the New York Education Law, Section 3020(a). Section 3020(a) establishes the hearing procedure used when charges are made against a teacher pursuant to other sections of the Education Law. See e.g., N.Y. Ed. Law, Section 3012. Since other federal courts have passed on issues similar to those that the plaintiff raises, I believe that it would be appropriate to make some brief comments on these decisions without purporting to render a decision on the merits of this litigation. See Greenspun v. Bogan, 492 F.2d 375, 381 (1st Cir. 1974); State of West Virginia v. Chas. Pfizer & Co., 440 F.2d 1079, 1085-1086 (2d Cir. 1971), cert. denied sub nom. Cotler Drugs, Inc. v. Chas. Pfizer & Co., 404 U.S. 871 (1971); Patterson v. Newspaper & Mail Del. U. of N.Y. & Vic., 384 F. Supp. 585 (S.D.N.Y. 1974), affirmed, 514 F.2d 767 (2d Cir. 1975), pet. for cert. filed sub nom. Larkin v. Patterson, 44 U.S. Law Week 3069 (July 28, 1975); McCray v. Beatty, 64 F.R.D. 107, 110 (D.N.J. 1974).

The essential facts are that charges were brought against the plaintiff by the Superintendent of Schools and Chief Executive Officer of the Enlarged City School District of Troy, New York. Three categories of offenses were alleged with very detailed specifications pursuant to the N.Y. Education Law, Section 3012(2), encompassing mental disability, insubordination and conduct unbecoming a teacher. See Board of Education, "Additional Papers", Exhibit XII (filed December 1, 1975). Pursuant to the New York Education Law, Section 3020(a), a hearing was commenced before an impartial hearing officer on June 11, 1975, and continued on several occasions, June 19, June 23 and July 11, 1975, in order that plaintiff could obtain the services of a lawyer. Plaintiff did retain a lawyer finally and pursuant to negotiations at that time between counsel for plaintiff and the attorneys for the other parties, the Agreement was signed by all parties which not only discontinued the instant

action, but also other state actions brought by the plaintiff and as well as the proceedings then being pursued and pending before the Board of Education.

Plaintiff's constitutional challenges are twofold. First, it is argued that Section 3020(a) of the New York Education Law is vague and overbroad. This is difficult to justify in light of the very detailed specifications that were provided to the plaintiff describing his conduct that was being questioned. Additionally, Section 3020(a) has been the subject of a decision of a three-judge federal court which held that it would be constitutional if certain modifications were made in its provisions. See Kinsella v. Board of Ed. of Cent. Sch. Dist. No. 7, Erie Cnty., 378 F. Supp. 54 (W.D.N.Y. 1974)(three-judge court). Such changes were made by the Commissioner of Education of New York and held to be constitutional in conformance with the decision in Kinsella. See Hodgkins v. Cent. School District No. 1, 48 A.D. 2d 302 (App. Div. 3rd Dept. 1975). It would thus seem that, while not ruling here on the issue, plaintiff's challenge to the constitutionality of Section 3020 and his request for a three-judge court might well be foreclosed by these previous decisions, and thus "wholly insubstantial" within the meaning of Goosby v. Osser, 409 U.S. 512 (1973). See also Gonzalez v. Automatic Employees Credit Union, 409 U.S. 90, 100 (1974).

The remaining constitutional claim is that plaintiff has been deprived of a property right by losing his tenure and by the allegations to his mental unfitness which were made in the charges to the Board of Education.

The Agreement rather than stripping plaintiff of tenure not only guarantees his tenure, but also his teaching position upon certification that he is competent to again teach. In terms of the charges of mental unfitness, two points can be made. First, the charges of mental incompetence must be considered dismissed as the Agreement stipulates along with the discontinuance of the

Section 3020 proceedings before the Board of Education; thus, no stigma can attach by virtue of the hearings since the Board of Education made no determination of the charges other than agreeing to dismiss them on the merits. See Agreement, para. 10; see also Gotkin v. Miller, 514 F.2d 125, 130 (2d Cir. 1975). The cases where it was held that charges of mental incapacity amounts to a deprivation of due process involved situations where an opportunity to defend is not afforded to the person accused. See Velger v. Cawley, 525 F.2d 334 (2d Cir. 1975), pet. for cert. filed, 44 U.S. Law Week 3359 (Dec. 8, 1975); Lombard v. Board of Education of City of New York, 502 F.2d 631, 637 (2d Cir. 1974), cert. denied, 420 U.S. 976 (1975). The Agreement here was a fair and sensible effort to terminate the numerous proceedings in which the plaintiff and the defendants were engaged, in this court, the courts of New York State, and primarily before the Board of Education.

In sum, the separate motions of the defendants are granted dismissing the complaint pursuant to the terms of the Agreement that agreed to its discontinuance. The plaintiff's request for the convening of a three-judge court is similarly denied along with the dismissal of the complaint.

It is so Ordered.

Dated: February 26, 1976
Albany, New York

James T. Foley
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

ALBERT E. McFERRAN, JR. Plaintiff-Appellant vs BOARD OF EDUCATION, et al Defendant-Appellee	Northern District of New York Civil No. 75-CV-265

I N D E X

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